

REVISED LAWS OF MINNESOTA *94*

SUPPLEMENT 1909

CONTAINING

THE AMENDMENTS TO THE REVISED LAWS,
AND OTHER LAWS OF A GENERAL AND
PERMANENT NATURE, ENACTED
BY THE LEGISLATURE IN
1905, 1907, AND 1909

WITH HISTORICAL AND EXPLANATORY NOTES TO PRIOR STATUTES
AND FULL AND COMPLETE NOTES OF ALL
APPLICABLE DECISIONS

COMPILED AND ANNOTATED BY
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[3477—]1. **Same.**—Every note or other evidence of indebtedness, or contract, filed pursuant to the provisions of this act, shall be held and considered to be full and sufficient notice to all parties interested of the existence and conditions thereof, but shall cease to be notice as against the creditors of the vendee and subsequent purchasers and mortgagees of the property in good faith after the expiration of six years from the day on which said note or other evidence of indebtedness or contract, or the last installment of the sum secured thereby, becomes due. (Laws 1897, c. 292, § 19, as amended by Laws 1905, c. 178, § 1.)

Historical.—“An act to amend section 19 of chapter 292 of the General Laws of the state of Minnesota for the year 1897, entitled ‘An act relating to mortgages and conveyances of personal property and contracts creating or reserving a lien thereon.’” Approved April 15, 1905.

Laws 1897, c. 292, was repealed by R. L. § 5542; the provisions of section 19 thereof being incorporated in section 3477. So far as the amended section above set forth differs from the Revised Laws, it is to be construed, by virtue of section 5504, as amendatory or supplementary.

SEED GRAIN CONTRACTS.

3479. Agreement—Lien.

Lien—Priorities.—Where, before the Revised Laws took effect, A. executed to B. a seed grain note, in consideration of which B. agreed to purchase and deliver to A. the amount of grain specified, and within a reasonable time B. caused the seed grain to be delivered to A., the note having become a first lien upon the crop grown therefrom, as against the claim of a second mortgagee, the purchaser of the wheat from A. was justified in paying it. The former statute was modified by this section. *Endreson v. Larson*, 101 Minn. 417, 112 N. W. 628, 118 Am. St. Rep. 631.

CHAPTER 68.

FRAUDS.

STATUTE OF FRAUDS.

3483. No action on agreement, when.

Statute of frauds in general—Performance.—Contracts having been fully executed, no question of the statute arose. *Trudeau v. Germann*, 101 Minn. 387, 112 N. W. 281.

Contracts not to be performed within one year.—Where no definite time is fixed for the continuance of a partnership, it is at will. The statute has no application where the contract could be performed within the year, or where it runs for an indefinite time. *Stitt v. Rat Portage Lumber Co.*, 98 Minn. 52, 107 N. W. 824.

Where the contract provided for cutting and delivery of all the merchantable pine timber standing on certain lands, not less than 9,000,000 nor more than 12,000,000 feet in one season, to be paid for in part when the logs were banked, and as driven and delivered, although the time was not limited within which the contract should be completed, it appeared from its face that it was not to be executed within one year from its date, and hence was within the statute. *Grand Forks Lumber Co. v. McClure Logging Co.*, 103 Minn. 471, 115 N. W. 406.

Promise to answer for another.—Where the complaint alleged that cattle were sold and delivered by plaintiffs to a third party at his request in consideration of a promise of defendants to pay for them, the complaint alleged an original and not a collateral promise. *Bennett v. Thuett*, 98 Minn. 497, 108 N. W. 1.

Certain promise to pay for services held an original and not collateral promise. *Conrad v. Clarke*, 106 Minn. 430, 119 N. W. 214, 482.

Promise discharged by bankruptcy.—Prior to the taking effect of the Revised Laws it was held that an action to enforce an obligation barred by a discharge in bankruptcy, based upon the obligor's subsequent promise, must fail,

unless there be positive and unequivocal proof both as to the identification of the debt and as to a distinct, unconditional, and present promise to pay. *Pearshall v. Tabour*, 98 Minn. 248, 108 N. W. 808.

3484. Contracts for sale of goods, when void.

Contracts within statute.—A contract for clothing, to be made according to stipulated sizes, material, and styles, and to be delivered within a specified time, was not within the statute. *Schloss v. Josephs*, 98 Minn. 442, 108 N. W. 474.

Where a memorandum on its face purported to be for a sale of goods already manufactured, and was void because not signed by the party to be charged, parol evidence was competent to prove that the sellers were manufacturing clothiers only, that the buyer had transacted business with them as such for a number of years, and that the contract was not for the sale of goods already manufactured, but for goods to be manufactured specially for the buyer according to certain sizes, designs and quality. *Becker v. Calmenson*, 102 Minn. 406, 113 N. W. 1014.

Acceptance.—Where, though a contract of sale was not signed by the seller, it was signed by the purchasers and the goods accepted, the contract held not void. *Gilfoil v. Western Mfg. Co.*, 121 N. W. 904.

3487. Conveyance, etc., of land.

G. S. 1894, § 4213, cited in *Laythe v. Minnesota Loan & Investment Co.*, 101 Minn. 152, 112 N. W. 65.

Conveyances—Mortgage.—Where S., being indebted to various banks entered into an oral agreement with them and R., by which he was to execute notes secured by a mortgage on land to R., who was to indorse the notes without recourse to the banks in exchange for S.'s notes held by them, the land to be sold by S. and the proceeds applied to the notes, evidence was admissible to show the oral agreement, and such evidence did not tend to show an express trust resting in parol, in violation of G. S. 1894, § 4213. *First State Bank of Le Sueur v. Sibley County Bank*, 96 Minn. 456, 105 N. W. 485, 489.

Leases.—An agreement pursuant to which an elevator was constructed on railway land held a lease, and within the statute. *Todd v. Bettingen*, 98 Minn. 170, 107 N. W. 1049.

Writings, construed together in the light of surrounding circumstances, held to supply the requirements as to signature and description. *Rees v. Storms*, 101 Minn. 381, 112 N. W. 419.

Gifts.—To take a parol gift of land out of the statute, the donee must not only enter into possession, but also make improvements thereon, or perform such other acts with reference thereto as would make it inequitable not to enforce the gift. *Snow v. Snow*, 98 Minn. 348, 108 N. W. 295.

Trusts.—A verbal promise by a grantee to hold the legal title to land in trust for the benefit of the grantor and to reconvey it on demand, where there is no bad faith except that which arises from a refusal to carry out the promise, is void within the statute of frauds and uses and trusts, and the trust cannot be enforced. Where, however, a party obtains the legal title to land from another by fraud, or by taking advantage of confidential or fiduciary relations, or in any other unconscientious manner, so that he cannot justly retain the property, equity will impress a constructive trust upon it in favor of the party who is equitably entitled to it. *Henderson v. Murray*, 121 N. W. 214.

Agency.—Verbal authority to accept by telegram offer of purchase held not to obviate lack of written authority in agent. A contract so entered into by an agent is enforceable only when there has been a substantial part performance. *Thomas v. Rogers*, 121 N. W. 630.

3488. Leases—Contracts for sale of lands.

Contracts within statute.—An agreement by a husband to enter into a contract in the future for the sale of land owned by his wife is within the statute. *Betcher v. Rinehart*, 106 Minn. 380, 118 N. W. 1026.

Cited in *Thomas v. Rogers*, 121 N. W. 630.

CONVEYANCES FRAUDULENT AS TO CREDITORS.

3496. Of chattels without delivery—Fraud presumed.

Operation in general.—A sale of personal property, the possession thereof remaining in the vendor, is, under this section, presumptively fraudulent and void as against the creditors of the vendor and subsequent purchasers in good faith. This presumption is overthrown when those claiming under such sale make it appear that it was made in good faith and without intent to injure, delay, or defraud creditors or subsequent purchasers. Where a transaction is such as to make this section applicable, the principle that, where one of two innocent persons must suffer, the loss should fall on him whose acts or omissions has made the loss possible, does not apply. The dictum in *Flanigan v. Pomeroy*,

85 Minn. 264, 88 N. W. 761, to the contrary, disapproved. *Wilson v. Walrath*, 103 Minn. 412, 115 N. W. 203.

Cited and applied in *Gilbert v. Gonyea*, 103 Minn. 459, 115 N. W. 640.

See note under section 3503.

3498. With intent to defraud creditors, void.

Who are "other persons."—A wife, after a decree dissolving her marriage and awarding her alimony, may maintain an action to set aside a transfer of property made by her husband pending the divorce action, with intent to render ineffectual any recovery of alimony. *Cochran v. Cochran*, 96 Minn. 523, 105 N. W. 183.

Subsequent creditors.—A subsequent creditor cannot avoid a conveyance merely because it was made with intent to defraud existing creditors, but must show that its purpose was, or its effect will be, to defraud him. *Williams v. Kemper*, 99 Minn. 301, 109 N. W. 242.

Transfer in trust.—A transfer of real or personal property by a debtor to a third party to be held in trust for his use and benefit is void as to existing and subsequent creditors. *Williams v. Kemper*, 99 Minn. 301, 109 N. W. 242.

Good faith.—See *First Nat. Bank of Northfield v. Anderson*, 101 Minn. 107, 111 N. W. 947; *Dorwin v. Patton*, 101 Minn. 344, 112 N. W. 266.

Action to set aside.—If the complaint alleges that the creditor has recovered a judgment against the debtor and that execution has been returned unsatisfied, it need not allege that the debtor is insolvent and has no other property from which the judgment can be paid. *Williams v. Kemper*, 99 Minn. 301, 109 N. W. 242.

Plaintiff must show, by evidence outside of proof of judgment, that the claim on which the judgment was based existed at such a time as to have made him a creditor when the alleged fraudulent transfer was made. He is not required to establish that such claim was valid and enforceable. The grantee is estopped from setting up any defense, including the statute of limitations, which might have been interposed in the original action. *Irish v. Daniels*, 100 Minn. 189, 110 N. W. 968.

Evidence.—That the grantor was solvent is material, but not conclusive. *Quinn v. Minneapolis Threshing Mach. Co.*, 102 Minn. 256, 113 N. W. 689.

3502. Assignment of debt.

Laws 1899, c. 268, cited in *Dickson v. City of St. Paul*, 97 Minn. 258, 106 N. W. 1053.

3503. Sale of stock of merchandise.

Constitutionality.—Laws 1899, c. 291, was constitutional. *Thorpe v. Pennock Mercantile Co.*, 99 Minn. 22, 108 N. W. 940.

Operation in general.—Laws 1899, c. 291, which declared that sales made without compliance with its provisions "will be presumed to be fraudulent and void," made such sales presumptively fraudulent only; the statute merely prescribing a rule of evidence. *Thorpe v. Pennock Mercantile Co.*, 99 Minn. 22, 108 N. W. 940.

The failure of the vendee to secure an inventory, or inquire as to the vendor's creditors and the amount owing each, rendered the sale presumptively fraudulent and void, under section 3496 and 3503. *Gilbert v. Gonyea*, 103 Minn. 459, 115 N. W. 640.

In an action involving the validity of a bulk sale of a stock of goods, which plaintiffs claimed was void under this section, judgment for defendant will be affirmed, where it does not appear that plaintiffs were creditors when the sale was made, and a charge that it was made to defraud creditors was found untrue. *Seabury v. Michaelis*, 106 Minn. 544, 119 N. W. 65.

CHAPTER 69.

LIENS FOR LABOR AND MATERIAL.

FOR IMPROVEMENT OF REAL ESTATE.

3505. Mechanics, laborers and materialmen.

G. S. 1894, § 6237, cited in *Doyle v. Wagner*, 100 Minn. 380, 111 N. W. 275.

See note under section 3511.

Materials furnished, but not used.—The contractor employed plaintiff to do work on ornamental plastering, the major portion of which was done at the